IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No. 1655 of 1996

For Approval and Signature:

HONOURABLE MR.JUSTICE R.S.GARG

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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BALVANTBHAI MORARBHAI PATEL - Petitioner(s)
Versus
MAMLATDAR & 2 - Respondent(s)

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Appearance :
MR BA SURTI for Petitioner(s) : 1,
MR RC KODEKAR AGP for Respondents

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CORAM : HONOURABLE MR.JUSTICE R.S.GARG

Date : 10/04/2007

ORAL JUDGMENT

1. Mr.B.A. Surti, learned counsel for the petitioner and Mr.R.C. Kodekar, learned Assistant Government Pleader for respondents - State.

2. The petitioner, being aggrieved by the orders passed by the Mamlatdar-cum-ALT in the original ceiling matter, order passed by the Dy.Collector in Ceiling Appeal and the order passed by the Gujarat Revenue Tribunal in Revision Application, holding that the petitioner is in possession of excess land admeasuring 31 Acres and 5 Gunthas, is before this Court.

3. The total holdings of the petitioner are 89 Acres and 37 Gunthas. The Mamlatdar, on the first occasion held that he is entitled to 42 Acres as one unit and would also be entitled to 2/5 unit in view of additional members of the family, he declared 31 Acres and 5 Gunthas as additional land. The matter was taken in appeal and went to the Gujarat Revenue Tribunal. Every time there had been one or other remand and ultimately in the 5th round, by order dtd.27/9/1993, the Mamlatdar-cum-ALT in Ceiling Case No.1 of 1993 held that the petitioner was possessed of 31 Acres and 5 Gunthas excess land. The order was confirmed by the Dy.Collector in Ceiling Case No.20 of 1993 on 10-23/2/1994. Revision Application No.TEN/BA/238 of 1994 was dismissed by the Gujarat

Revenue Tribunal on 31/8/1995.

4. Mr.Surti, learned counsel for the petitioner has submitted that the Canal Officer's Certificate could not be relied upon unless the said Canal Officer had given appropriate opportunity to the petitioner to lead evidence and to show that the land was perennial irrigated in view of the statement of the petitioner that he was not irrigating the land, but the land was falling within the command area only. It was also submitted that in identical situation in the case reported in 1986 GLT 21, this Court has observed that such certificate issued without opportunity to the holder, cannot be relied upon. It was further submitted that the petitioner had come out with a case that the land became Kharaba land and as it was not cultivable or good for agricultural operation, it could not be termed as agricultural land and could not be included in the total holding of the petitioner. His further submission is that the order passed by the learned Gujarat Revenue Tribunal was absolutely bad.

5. So far as the principles of law laid down in the decision reported in 1986 GLT 21 are concerned, there could be no

dispute about the said principles. Unfortunately, the petitioner is raising the question after he has missed the opportunity. On an earlier occasion while making the order of remand, the Gujarat Revenue Tribunal had observed that the conversion ratio applied by the Mamlatdar-cum-ALT was not bad. It had approved the said conversion and on the basis of that it held that the total holdings were 89 Acres and 37 Gunthas. That finding recorded by the Gujarat Revenue Tribunal was against the interest of the petitioner, but he did not seek to challenge the said findings before the High Court or any other higher authority. The remand was not to make an inquiry into the Certificate of the Canal Officer or conversion ratio, but the remand was limited to two points only, firstly, to make an inquiry into the number of members of the family of the petitioner and secondly, that the land which was acquired by the Irrigation Department was acquired before the year 1976 or subsequent thereto. From the order passed by the Mamlatdar, it would clearly appear that after understanding the order passed by the Gujarat Revenue Tribunal, it had framed two issues and no third question was raised. Once the Gujarat Revenue Tribunal had held

that conversion ratio etc. and the extent of the land was proper, then, there would be no scope for any authority subordinate to the Gujarat Revenue Tribunal to make an inquiry and to come to a different conclusion. As the order of remand was limited to two issues only, the authorities could not enter into the third question. The question relating to the Certificate issued by the Canal Officer, the alleged non-grant of the opportunity, the alleged non-inquiry etc. would lose all their importance in view of unchallenged findings recorded by the Gujarat Revenue Tribunal.

6. So far as the question relating to Kharaba land is concerned, it has come on the record that according to the revenue officers, the land has become saline and Kharaba land in the year 1984-85. If the petitioner was to show to the Court that the land was saline land or Kharaba land prior to 1976, then he was required to lead some evidence. The revenue records prior to the year 1976 do not show that the land was Kharaba land and the petitioner did not say before any authority including the Mamlatdar-cum-ALT or any one that an entry be made in the revenue records that the land has become Kharaba

land and is not worth cultivation. If the land has become Kharaba in the year 1984-85, then, the said change in the character of the land would not revert back to the year 1976, the date on which entitlement is to be calculated. Even on this point, I am unable to hold that the petitioner has made out any case for interference.

7. So far as the acquisition of the land by Irrigation Department is concerned, it is undisputed that the land belonged jointly to certain persons, that the petitioner did not lead any evidence, that the joint land was partitioned, certain entries were made with regard to the partition and then the land which fell in possession of the petitioner, was acquired. In case of joint property, a party is owner of every inch of the property and unless the land is partitioned, one cannot say that the portion which belonged to him or the title in relation to which vested in him, only was acquired. In the present matter, if the possession of the property still with the petitioner and there had been no partition of the property, then, it would not be possible for any court to hold in favour of the petitioner that the his land only was acquired.

8. No other point was pressed by Mr.Surti, learned counsel for the petitioner.

9. I find no reason to interfere. The petition deserves to and is accordingly dismissed with costs which is quantified at Rs.5000=00 (Rupees Five Thousand only). Rule is discharged. Interim relief, if any, is vacated.

(R.S. GARG, J.)

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